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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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8 HSBC Bank USA, National Association as
9 Trustee for GSAA Home Equity Trust
10 2005-3,

Case No. 2:12-cv-00684 -APG-PAL

11 **ORDER REMANDING CASE
12 TO STATE COURT**

13 Plaintiff,

14 v.

15 Gary Diaz and/or Occupants 1-5,

16 Defendants.

17 Plaintiff commenced this action by filing a Verified Complaint for Unlawful
18 Detainer in the Justice Court of Las Vegas Township on March 19, 2012. On April 25,
19 2012, Defendant Gary Diaz removed that action to this Court. Plaintiff has moved to
20 remand the case to state court (Dkt. #20).

21 **ANALYSIS**

22 The party seeking removal has the burden to prove that removal is proper.
23 *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921); *Strawn v. AT&T Mobility*
24 *LLC*, 530 F.3d 293, 298 (4th Cir. 2008). Due to the legislative purpose to “restrict the
25 jurisdiction of federal courts on removal,” removal statutes must be “strictly construed.”
26 *Duncan v. Stuetzle*, 76 F.3d 1480, 1486 (9th Cir. 1996) (quoting *Shamrock Oil & Gas*
27 *Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941)).

1 **A. This Court Lacks Federal Question Jurisdiction Over This Matter.**

2 In his Objection to Remand [Dkt. #21], Defendant Diaz apparently attempts to
 3 invoke this Court's federal question jurisdiction by vaguely referring to alleged violations
 4 of various "federal laws and statutes." See Opposition at pp. 1-2. Even if such vague
 5 allegations are true, they do not confer jurisdiction upon this Court. District courts must
 6 look only to the plaintiff's statement of his or her own cause of action and not to actual or
 7 anticipated defenses or counterclaims. *Vaden v. Discover Bank*, 556 U.S. 49 (2009).

8 The independent jurisdictional basis Discover relies upon in this
 9 case is 28 U.S.C. § 1331, which vests in federal district courts jurisdiction
 10 over "all civil actions arising under the Constitution, laws, or treaties of the
 11 United States." Under the longstanding well-pleaded complaint rule,
 12 however, a suit "arises under" federal law "only when the plaintiff's
 13 statement of his own cause of action shows that it is based upon [federal
 14 law]." *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152, 29 S.Ct.
 42, 53 L.Ed. 126 (1908). Federal jurisdiction cannot be predicated on an
 actual or anticipated defense: "It is not enough that the plaintiff alleges
 some anticipated defense to his cause of action and asserts that the
 defense is invalidated by some provision of [federal law]." *Ibid.*

14 Nor can federal jurisdiction rest upon an actual or anticipated
 15 counterclaim. We so ruled, emphatically, in *Holmes Group*, 535 U.S. 826,
 16 122 S.Ct. 1889, 153 L.Ed.2d 13. Without dissent, the Court held in *Holmes
 17 Group* that a federal counterclaim, even when compulsory, does not
 18 establish "arising under" jurisdiction. Adhering assiduously to the well-
 19 pleaded complaint rule, the Court observed, *inter alia*, that it would
 20 undermine the clarity and simplicity of that rule if federal courts were
 21 obliged to consider the contents not only of the complaint but also of
 22 responsive pleadings in determining whether a case "arises under" federal
 23 law. *Id.*, at 832, 122 S.Ct. 1889. See also *id.*, at 830, 122 S.Ct. 1889
 24 ("[T]he well-pleaded complaint rule, properly understood, [does not] allo[w]
 25 a counterclaim to serve as the basis for a district court's 'arising under'
 26 jurisdiction."); *Franchise Tax Bd. of Cal. v. Construction Laborers Vacation
 27 Trust for Southern Cal.*, 463 U.S. 1, 10–11, and n. 9, 103 S.Ct. 2841, 77
 28 L.Ed.2d 420 (1983) ("The well-pleaded complaint rule applies to the
 original jurisdiction of the district courts as well as to their removal
 jurisdiction.").

23 *Id.* at 59-61. Thus, Defendant's allegations of violations of federal statutes must be
 24 disregarded in analyzing this Court's federal question jurisdiction on removal.

25 Plaintiff's Verified Complaint seeks possession of real property located in Clark
 26 County, Nevada, which Plaintiff purchased at a foreclosure sale. The claims arise under
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1 state law (specifically NRS § 40.255), not federal law. Therefore, this Court lacks federal
2 question-jurisdiction over this matter.

3 **B. This Court Lacks Diversity Jurisdiction Over This Matter.**

4 Defendant also vaguely suggests that this Court may exercise diversity
5 jurisdiction over this matter because Plaintiff “employed persons and entities outside this
6 jurisdictional area.” See Opposition at p. 1. This argument is likewise unavailing. 28
7 U.S.C. § 1441(b)(2) states that “[a] civil action otherwise removable solely on the basis
8 of the jurisdiction under section 1332(a) of this title may not be removed if any of the
9 parties in interest properly joined and served as defendants is a citizen of the State in
10 which such action is brought.” Thus, a citizen of Nevada may not remove an action to
11 this federal court sitting in Nevada based solely on diversity of citizenship. See *also*
12 *Spencer v. U.S. Dist. Court for the N. Dist. of Cal.*, 393 F.3d 867, 870 (9th Cir. 2004)
13 (“This ‘forum defendant’ rule ‘reflects the belief that [federal] diversity jurisdiction is
14 unnecessary because there is less reason to fear state court prejudice against the
15 defendants if one or more of them is from the forum state.’”)(quoting Erwin Chemerinsky,
16 *Federal Jurisdiction* § 5.5, at 345 (4th ed.2003)).

17 Defendant Diaz is a Nevada resident and citizen, occupying the real property
18 located in Clark County, Nevada from which Plaintiff seeks to remove him. Therefore,
19 Defendant’s attempt to remove based on diversity of citizenship is barred by 28 U.S.C. §
20 1441(b)(2).

21 **CONCLUSION**

22 For the foregoing reasons, this Court lacks jurisdiction over this matter. Removal
23 was improper.

24 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Remand [Dkt. #20] is
25 **GRANTED**, and this case is remanded to the state court.

26 **IT IS FURTHER ORDERED** that Defendant’s Motion to Stay Proceedings [Dkt.
27 #22] is **DENIED** as moot.

1 The Clerk of Court shall accept no further pleadings in this matter.
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4 Dated: May 17, 2013.

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ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE